II. BOOK REVIEWS.

A CODE OF FEDERAL PROCEDURE. By Walter Malins Rose. In three volumes. San Francisco: Bancroft-Whitney Company. 1907. pp. xxx, 3186. 24cm.

In this work Mr. Rose has produced a book of unusual value to the practicing lawyer. The mere statement that more than six hundred closely printed pages in the third volume are devoted to approved forms relating to nearly every sort of procedure in the federal courts is sufficient to show the practical character of this treatise. The text itself, which occupies slightly more than one-half of the whole number of pages, presents the principles of federal practice in the form of a code, the greater number of the sections of which are quoted directly from the Constitution, the federal statutes, or the rules of court. Where, however, principles are found in the law which are stated only in the decisions, the author has summarized them in sections containing his own statement of the established rules. The sources of both the author's sections and those quoted from the Constitution, the statutes, or the court rules, are clearly indicated. The book contains very complete cross-references, and also tables of parallel references by means of which the sections of the code in which any section of the Revised Statutes or of the Statutes at Large is discussed may be readily found. The work also contains the Bankruptcy Act and the General Orders in Bankruptcy, the rules of the Supreme Court and of all the circuit courts of appeals, and the rules of the circuit courts of the more important jurisdictions. The whole is made readily accessible by an index of more than one hundred and thirty pages.

Ordinarily the treatment of a complicated subject within the somewhat rigid limits of a code is a task of the greatest difficulty. The rules of federal procedure, however, are so largely derived from positive enactments rather than from common-law principles or customary practice, that the subject lends itself to codification more readlly than almost any other. One disadvantage of a treatise in code form is that the principles with which it deals must be stated in the form of established propositions, thus leaving less chance for a discussion of doubtful or disputed points. While this defect will be felt at times by the critical reader of Mr. Rose's work, it has been avoided for the most part by the use of full annotations. These annotations make up the greater part of the text of the book. They contain a complete exposition and discussion of the rules laid down in the various sections of the code, arranged in ordinary text-book form, with full references to the decisions upon which the notes are based. No doubt Mr. Rose's experience in collecting federal cases for his former works has been of great value to him in the preparation of these volumes. At any rate, the collection of cases seems to be very complete. The treatment of the various topics is clear and logically arranged. One may with some confidence express the hope that the work will meet with the cordial welcome from the profession which its merits warrant. H. LEB. S.

THE PRINCIPLES AND FORMS OF PRACTICE. By Austin Abbott. Second Edition by Carlos C. Alden. In two volumes. New York: Baker, Voorhis and Company. 1907. pp. xiv, 1170; xi, 1171–2317. 8vo.

Outside of the code itself no book is used more by the practicing attorney in New York than Abbott's Practice and Forms. A new edition of this work will therefore be welcomed by all lawyers in that state. Twenty years have passed since the first edition was published, yet in spite of the changes in the code and the many decisions of the court, the editor of the present edition has found very little to change in the first edition. His work has consisted almost entirely in noting the amendments to the code in the past twenty years, and the decisions of the courts during that period. These amendments and decisions are collected annually in the New York Annual Digest under the title "Code

of Civil Procedure." This digest should render the task of one editing a book on code practice easy, and should make it possible for him to attain the highest degree of accuracy.

The actual merits of the editor's work can, perhaps, be ascertained only by use. However, to test the accuracy of the present work we have examined all the cases on the code decided during 1905 and 1906, and the amendments to the code in those years. We have found many errors, both of omission and commission, of which the limits of this review will not permit any extended statement. For example, the editor states that a motion to discharge an attachment must be made before final judgment, and he cites § 687 of the code in support of that proposition (p. 1258). That section was amended by the Laws of 1906, c. 507, so that such a motion is allowed after judgment. Again, he states that an action may be discontinued without the consent of the attorney (p. 1588); he fails to note in that connection that § 55 of the code provides that a party can act only through his attorney, nor does he cite the case of Kuehn *v.* Syracuse Rapid Transit Co. (104 App. Div. 580, 587) which so held on a question of discontinuance.

The following cases which have an important bearing on some of the subjects treated by the editor were not noticed. Davids *v.* Brooklyn Heights R. Co. (104 App. Div. 23; aff. 182 N. Y. 526), on the liability of a master for arrest under § 849 for assault committed by servant; Carlisle *v.* Barnes (183 N. Y. 272), holding that where the chief judge of the Court of Appeals has denied leave to appeal to that court, the party cannot get such leave from another judge; People *ex rel.* Jerome *v.* Court of General Sessions (185 N. Y. 504), holding that prohibition is the proper remedy where the Court of General Sessions is about to exceed its powers by granting a new trial; Matter of Sherril *v.* O'Brien (186 N. Y. 1), holding that an order denying a writ of *mandamus* to be appealable to the Court of Appeals must recite that the writ was not refused by the Supreme Court in the exercise of its discretion; Matter of Schroeder (113 App. Div. 221), holding that objections as to form of referee's report cannot be raised on appeal; Lawton *v.* Partridge (111 App. Div. 8), holding in an action against joint defendants a judgment against one is authorized; Lederer *v.* Lederer (108 App. Div. 228), holding that reference may be terminated when the referee files an invalid report (this case is cited by the editor (p. 1878), but not for this proposition); Jones *v.* Fuchs (106 App. Div. 260), holding that a court has no power to extend the time to serve summons in a case where an attachment is made; Ross *v.* Metropolitan St. Ry. Co. (104 App. Div. 378), on the motion for a new trial; Frick *v.* Freudenthal (45 Misc. 348), holding that an allegation as to fraud cannot be regarded as surplusage.

The editor would have added greatly to the value of the present edition if he had indicated in an introductory chapter the changes in the code in the past twenty years. He has, moreover, failed to add a table of cases; an unpardonable omission in a modern law book. Nor has he stated that he has not continued Mr. Abbott's plan of citing the cases in other states than New York.

S. J. R.

SUITS IN CHANCERY. By Henry R. Gibson. Second Edition. Knoxville, Tenn.: Gaut-Ogden Company. 1907. pp. xx, 1203. 8vo.

The title of this volume is not only descriptive of its scope, but is highly characteristic in its conciseness and comprehensiveness of the work itself and of the author. In 1891 Judge Gibson, with a mind enriched with learning and ripened with years of experience in the practice and upon the bench of the chancery courts of Tennessee, appreciating the needs of a guide to chancery practice for use by Tennessee lawyers, put forth his first edition of this work. The volume was promptly accepted according to its real worth as an authority, has continued to hold its rank, and has become, more than a mere convenience, an absolute necessity to every Tennessee lawyer.

If it were possible to improve upon the perfect it might well be said that